COURT NO. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 320 of 2002

Smt. Rajkali
And others.

…….. **Appellants.**

Versus

New India Assurance Co. Ltd.
and another …… **Respondents.**

Coram: Hon. P. C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 7-9-1993 passed in M.A.C.T. Case No. 09 of 2001, Smt. Rajkali and others Vs. New India Assurance Company Ltd. and another, by Motor Accident Claims Tribunal/District Judge Nainital ***(in short the Tribunal)***, whereby the learned Tribunal has allowed the claim petition and has awarded Rs. 1,20,000/- as compensation along with interest @ 9% per annum, as mentioned in the impugned order, in favour of the claimant Nos. 1 to 4-appellant no.1 to 4 under Section 166 of the Act. Aggrieved, the claimant –appellants have come up in appeal for enhancement of quantum of compensation on the ground that the learned Tribunal has failed to appreciate the evidence and the multiplier applied by the learned Tribunal is erroneous.

Facts, in brief, are that present claim petition has been filed under Section 166 of the Act for the death of Singhasan Prasad (**the deceased**), who died on 30.11.2000 in a motor accident occurred in front of main gate of Century Mills, with the allegation that on the fateful day the deceased was going to answer call of nature, when at 5.30 p.m., all of a sudden, a truck No. USH 1327 owned by respondent no.2 and driven rashly and negligently

by its driver Shakeel dashed the deceased, who sustained injuries and died on the spot. The driver was apprehended by the local people then and there. It has been alleged that the vehicle was insured with respondent no.1. Hence the claim petition by the legal heirs of the deceased.

The O.P.- respondent no.1 filed its written statement and contested the petition. It has denied the allegations of the claim petition for want of knowledge. Plea of non-compliance of the provisions of the Act has also been raised and the quantum of compensation claimed has been challenged.

The learned Tribunal framed necessary issues in the case. After considering the evidence on record, the learned Tribunal found that the motor accident resulting into grievous injuries and consequent death of the deceased had occurred due to rash and negligent driving by the driver of the truck involved in the accident. It has also been found that the said truck was duly insured with respondent no.1. The Tribunal has also held that all necessary documents have been filed on record, therefore, the petition is maintainable. The learned Tribunal has assessed the annual income of the deceased at Rs. 18,000/- and after deducting 1/3rd from it, it has been held that annual loss of dependency comes to Rs. 12000/-. The age of the deceased at the time of death was found to be 47 years. The Tribunal has applied multiplier of 10 to determine the total loss of dependency, which come to 12000 x 10 =1,20,000/-. Ultimately, the learned Tribunal has awarded compensation to the tune of Rs. 1,20,000/- along with interest @ 9% per annum, which gave rise to this appeal.

We have learned counsel for the claimant-appellants Sri Z.U. Siddiqui as well as learned counsel for the respondents-Insurance Company, Sri T.A. Khan and have carefully gone through the entire material before us including the impugned judgment and award.

It has submitted by the learned counsel for the appellant-claimants before us that the learned Tribunal has not applied the appropriate multiplier, through it has found that the deceased was undisputedly 47 years of age, whereas at least multiplier of 13 ought to have been applied so as to come to a just compensation. Having considered all aspects of the case, we are inclined to accept the contention of the appellants that the learned Tribunal ought to have applied multiplier of 13 in the present case. The deceased was aged 47 years, therefore, comes in the age group of 45-50 years. The deceased has left behind his widow the three minor children. However, there is no dispute about the income of the deceased, therefore, by applying the appropriate multiplier of ***13*** as per Second Schedule of Section 163-A of Act, the total amount of compensation comes to 12,000/- x 13 = ***1,56,000/-.*** instead of Rs. 1,20,000/- as awarded by the learned Tribunal. The appellants shall be entitled to interest as awarded by the Tribunal. To this extent alone, the impugned judgment and award deserves to be modified.

The appeal is allowed. The judgment and award, under appeal, is modified to the above extent. No order as to costs.

(B. S. Verma, J.) **(P.C. Verma, J.)**

24-08-2004
RCP